



**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

**JUDGMENT**

**Not Reportable  
Case No: 2025-080797**

In the matter between:

**RICHARD HORNSEY CONSULTING (PTY) LTD**

Applicant

and

**AFRICAN NICKEL HOLDINGS (PTY) LTD**

Respondent

**Coram: FAGAN, AJ**

**Heard on: 25 May 2026**

**Delivered on: 4 June 2026**

**Summary:**

The applicant alleges that it has a liquidated claim of R868 740.05 against the respondent which the respondent is unable to pay, and on that basis seeks the provisional winding-up of the respondent. The defence to the order sought is that the

applicant is not a creditor of the respondent, and accordingly lacks the requisite legal standing to bring the application.

It is not in dispute on the papers that an agreement was concluded between the applicant and the respondent that would make the respondent liable for the cost of services provided to it by the applicant. The respondent duly paid a number of invoices presented to it by the applicant. The last two invoices, which were made out to “Nitomic Minerals Resources”, are unpaid. The respondent contends that the debtor is a Namibian company by that name.

The respondent has however failed to show that a new agreement was entered into that would make a different entity liable for the costs of the services provided by the applicant.

In the premises, the respondent’s defence to the applicant’s claim fails. As the inability on the part of the respondent to pay its debts is not in dispute, the application for a provisional order of winding-up must succeed.

---

## ORDER

---

1. The respondent is placed under a provisional winding-up order in the hands of the Master of the High Court, Cape Town.
2. A rule *nisi* is issued calling upon the respondent and any other interested party to appear and to show cause, if any, to this Court on Wednesday, 22 July 2026 as to:

- (i) why the respondent should not be finally wound up; and
- (ii) why the costs of this application should not be costs in the winding-up.

3. Service of this order is to be effected:

- (i) by the Sheriff:
  - (a) at the registered office of the respondent;
  - (b) on the respondent's employees in the manner prescribed in section 346A of the Companies Act 61 of 1973;
  - (c) on any trade union which represents any of the respondent's employees; and
  - (d) on the South African Revenue Service; and
- (ii) by one publication in each of the *Cape Times* and *Die Burger* newspapers.

---

## JUDGMENT

---

**FAGAN, AJ:**

**Introduction**

[1] African Nickel Limited ('ANL') is registered in the United Kingdom, but has an office in Cape Town. It conducts mining business – the identification and development of mineral exploration projects, with a particular emphasis on nickel sulphide resources suitable for use in battery technology and energy infrastructure – in southern Africa. It does so through corporate vehicles. There are six subsidiary companies registered in South Africa, including the respondent, African Nickel Holdings (Proprietary) Limited ('ANH'). There is also at least one company registered in Namibia, Nitomic Minerals Resources (Proprietary) Limited ('NMR').

[2] Richard Hornsey Consulting (Proprietary) Limited ('RHC') provides specialist geological consulting services to the mineral exploration and resource sector. It has applied for the provisional liquidation of ANH.

[3] RHC brings the application on the grounds both that ANH is unable to pay its debts (section 344(f) of the Companies Act 61 of 1973 read with section 345 thereof and with item 9 of schedule 5 to the Companies Act 71 of 2008) and that it is just and equitable for ANH to be wound up (section 344(h) of the 1973 Companies Act read with the same item of the 2008 Companies Act).

[4] As I shall explain below, it is not in issue that ANH is unable to pay its debts. What is in issue is whether RHC has legal standing to apply for ANH's liquidation.

[5] RHC alleges that it has a liquidated claim of R868 740.05 against ANH, the amount being due but unpaid. ANH however denies that RHC is its creditor, and on that basis disputes RHC's legal standing to seek its liquidation. ANH alleges that the creditor to which RHC should look for payment of its claim is NMR.

[6] It is accordingly necessary to determine the question of whether ANH is indeed a debtor of RHC. If ANH is, then RHC will have the requisite standing to pursue its application for liquidation on the undisputed basis of ANH's inability to pay its debts. If ANH is not, then RHC will lack the requisite standing to pursue its application either on that basis or on the alternative basis that it would be just and equitable to wind up ANH. Thus the alternative basis for winding up ANH – that it is just and equitable to do so – adds nothing, and Mr Welgemoed, who appeared on behalf of RHC, correctly did not press it in argument.

*Whether RHC is a creditor of ANH*

[7] In the founding affidavit, deposed to by Mr Richard Hornsey, the allegation is made that RHC was approached in 2022 by ANH to render professional services at ANH's mining operations on the Kunene project in northern Namibia. In terms of the agreement, RHC would invoice ANH in accordance with a reasonable and market-related fee structure for services rendered. It is further alleged that payment was to be made thirty days from invoice.

[8] Finally in regard to the conclusion of the agreement, it is alleged that written confirmation of ANH's details and VAT registration number was received from Mr Deon van der Mescht, a director of ANH, on 8 July 2022. The email in that regard is an annexure to the founding affidavit. Mr van der Mescht in fact asks for the details of an invoice (which does not form part of the papers) to be amended by (a) making it out to ANH and (b) adding the VAT registration number for ANH that he provided. The invoice had previously indicated VAT to be 'not applicable'. Below Mr van der Mescht's name appears his title, which is that of chief executive officer, and the name not of ANH, but of ANL.

[9] The conclusion of the agreement is not set out with the degree of particularity one would usually expect. One is not told who represented ANH and RHC in concluding the agreement; nor whether the agreement was oral or in writing; nor where it was concluded; nor anything more exact than 2022 as the date of its conclusion.

[10] That there was an agreement between ANH and RHC for the provision of services by the latter to the former is however not, on a fair reading of the answering papers, in dispute. Mr Japie Coetzee, the chief technology officer of ANL, in the

answering affidavit on behalf of ANH testifies as follows: 'The Applicant's initial engagement had been arranged through ANL group structures and the Respondent, in particular.' The answering affidavit also contains an admission of the allegation that RHC 'initially rendered services to the Respondent'.

[11] When Mr van der Mescht confirmed ANH's details and VAT registration number on 8 July 2022, NMR did not yet exist. Mr Coetzee's evidence is that it was incorporated only on 28 September 2022, 'to serve as the operating and title-holding entity for the Kunene Project'.

[12] RHC alleges that it rendered services to ANH pursuant to the agreement, and invoiced ANH on a monthly basis for those services from 2022 to 2023. Nine such invoices, all of them made out to ANH and all of which were paid, are annexed to the founding affidavit. Each invoice details the services that were rendered. Because those services varied, each invoice is in a different amount.

[13] In her heads of argument on behalf of ANH Ms McChesney confirmed that '[i]t is common cause that all invoices that were initially made out to the Respondent, were paid by the Respondent'.

[14] RHC's claim arises from its final two invoices, dated 1 November 2023 and 3 December 2023 and totalling R868 740.05. It is ANH's case that those two invoices were payable not by it, but by NMR.

[15] In order for its defence that those invoices were payable by NMR rather than by ANH to succeed, it was necessary for ANH to allege and prove the conclusion of a new agreement pertaining to the services to be provided by RHC on the Kunene project. Absent a new agreement which made NMR liable for the payment of invoices rendered by RHC for its services, the obligation to make payment would remain that of ANH.

[16] Mr Hornsey says that he was contacted in about October 2023 by Mr Coetzee. Mr Coetzee's email of 10 October 2023 is an annexure to the founding affidavit. Mr Coetzee requested RHC to make out all future invoices to Nitomic Minerals Resources. This, according to the founding affidavit, was believed by Mr to be the trading name for ANL and its companies. The email makes no mention of changing the VAT registration number.

[17] The last two of RHC's invoices, the ones that remain unpaid, were duly made out to Nitomic Minerals Resources. The VAT registration number is unchanged from the previous invoices, as is the address.

[18] On 12 December 2023 Mr Coetzee sent a further email to Mr Hornsey, referring to a WhatsApp conversation between them regarding non-payment. Mr Coetzee said that payment had been approved by him and Mr van der Mescht. He added that they were having difficulties in receiving funds on time. The email was sent on an ANL letterhead.

[19] On 24 January 2024 Mr van der Mescht wrote to Mr Hornsey, again seeking to explain the delay in payment. This letter, too, was on an ANL letterhead, with the

explanatory addition of 'SA Representative Office'. Another letter, on the same letterhead and again trying to explain the delay, was sent by Mr van der Mescht on 6 May 2024.

[20] The letter of demand in terms of section 345 of the 1973 Companies Act that was sent by RHC's attorneys on 27 September 2024 was addressed to African Nickel (South Africa) trading as Nitomic Minerals Resources.

[21] In a response dated 30 October 2024, attorneys purporting to act on behalf of African Nickel (South Africa) denied liability in respect of the alleged claim, without providing any further details.

[22] A fresh letter of demand was sent on 14 March 2025 (by email) and 17 March 2025 (by registered post) by RHC's attorneys. This time it was addressed to ANH trading as Nitomic Minerals Resources. The letter of demand invokes both section 344(f) and section 345(1)(a) of the 1973 Companies Act.

[23] As previously, the response dated 7 April 2025 from attorneys for ANH denied liability without providing any further details.

[24] It was only in the answering affidavit to which Mr Coetzee deposed on 1 September 2025 that ANH provided a version. What Mr Coetzee explains is that there were existing exclusive prospecting licences for the areas in the Kunene region of northern Namibia that ANL wished to explore. ANL entered into negotiations in 2022 with the holder of the licences. Pursuant to those negotiations, NMR was incorporated

as a joint-venture company between, essentially, the holder and ANL. It was only on 24 May 2023 that the licences were transferred to NMR.

[25] 'From this point onward,' Mr Coetzee testifies, 'all service provider engagements, including the contracting of consultants, the issuing and receiving of invoices, and the management of project finances, were handled directly by Nitomic.'

[26] The operational shift, according to Mr Coetzee, 'was both clear and well-documented'. All services rendered after 24 May 2023, and all liabilities incurred in relation to the Kunene project, were for the account of NMR.

[27] Mr Coetzee refers in this regard to the two outstanding invoices, made out to the name of Nitomic Minerals Resources.

[28] I have remarked that the conclusion of the agreement on which RHC relies to establish its *locus standi* is not set out with the degree of particularity one would usually expect. RHC's evidence about the conclusion of that agreement (where any potential difficulties are overcome by the fact that the conclusion of the agreement is ultimately not in dispute) is however a model of clarity and completeness compared to ANH's evidence about the alleged new agreement.

[29] There is, in truth, no supporting evidence at all. Mr Coetzee's testimony does not go beyond an internal restructuring within the ANL group, resulting in the administration of the Kunene project being transferred to NMR. He says that the 'contracting of consultants' was 'handled directly' by NMR, but that is not at all the same thing as

saying that an agreement between RHC and ANH was terminated and replaced by an agreement between RHC and NMR.

[30] It would have been necessary for there to be evidence of the actual conclusion of a new agreement; but nothing of the sort appears in the answering papers. Asking a party to an existing agreement in future to make out invoices differently on no basis constitutes a termination of that agreement and the conclusion of a fresh agreement with another party.

[31] The only change that was sought, by way of Mr Coetzee's email of 10 October 2023, was that future invoices be made out to Nitomic Minerals Resources. The address did not change; nor did the VAT registration number.

[32] Mr says that he believed Nitomic Minerals Resources to be the trading name for ANL and its companies. The fact that the full name of NMR was not used – that Nitomic Minerals Resources was not indicated to be a private company – lends some support to this belief. On the other hand, as is pointed out by ANH, it is apparent from a report prepared by RHC on 20 June 2023 for NMR that RHC knew about the existence of a company by that name; and also knew that NMR was involved in, or even responsible for, the Kunene project.

[33] The dispute in that regard does not however take the matter any further. Even if RHC did know that the invoices were being made out to NMR, that fact alone would be insufficient to establish that a new agreement had been concluded between RHC and NMR, in substitution of the agreement between RHC and ANH.

## Conclusion

[34] I am accordingly of the view that RHC is, on a balance of probabilities, a creditor of ANH, and therefore has the requisite standing to seek its liquidation.

[35] RHC has failed to discharge the onus that it bears of showing that the debt, which prima facie exists, is bona fide disputed on reasonable grounds (*Orestisolve (Pty) Ltd t/a Essa Investments v MDFT Investment Holdings (Pty) Ltd and another* 2015 (4) SA 449 (WCC) para 8).

[36] As I have said, the inability of ANH to pay its debts as and when they become due is not in dispute on the papers. It is an inability that affected the whole of the ANL group of companies. Mr Coetzee's email of 12 December 2023 states that 'we currently do have difficulties in receiving funds on time' and also that '[o]ur financier promised that we will be one of the first to get funds as they get paid'. In the letter from Mr van der Mescht of 24 January 2024 RHC is told that '[t]he delay in payment is a result of unforeseen circumstances affecting our primary funder' and that 'we are also seeking alternative funding, not only to relieve the interim cash flow shortage, but also to further develop the Company's projects'.

[37] The answering affidavit refers to efforts that were made in the second half of 2023, unsuccessfully, to secure alternative sources of funding, resulting in the suspension of operations at the Kunene project and the retrenchment of most of the staff. NMR, one is told, has followed a process of compromising with its creditors in the Namibian High Court, seeking thereby to avoid liquidation.

[38] A proper case for the provisional liquidation of ANH has in the circumstances been made out.

[39] WHEREFORE I make the following order:

[39.1] The respondent is placed under a provisional winding-up order in the hands of the Master of the High Court, Cape Town.

[39.2] A rule *nisi* is issued calling upon the respondent and any other interested party to appear and to show cause, if any, to this Court on Wednesday, 22 July 2026 as to:

- (i) why the respondent should not be finally wound up; and
- (ii) why the costs of this application should not be costs in the winding-up.

[39.3] Service of this order is to be effected:

- (i) by the Sheriff:
  - (a) at the registered office of the respondent;
  - (b) on the respondent's employees in the manner prescribed in section 346A of the Companies Act 61 of 1973;
  - (c) on any trade union which represents any of the respondent's employees; and

- (d) on the South African Revenue Service; and
- (ii) by one publication in each of the *Cape Times* and *Die Burger* newspapers.

**COURT**

---

**E W FAGAN**

**ACTING JUDGE OF THE HIGH**

**WESTERN CAPE DIVISION**

**Appearances**

For Applicant: C J Welgemoed  
Instructed by: Louw & Heyl Attorneys

For Respondent: M A McChesney  
Instructed by: Hannes Gouws & Partners